



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 24, 1996

Ms. Chris G. Elizalde
Attorney for Wimberley I.S.D.
Walsh, Anderson, Underwood, Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR96-1922

Dear Ms. Elizalde:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24549.

The Wimberley Independent School District (the "district") received an open records request for, among other things, "the superintendent's evaluation/appraisal used to determine current and previous contract renewal." You have submitted to this office as responsive to the request the evaluations of the superintendent conducted by the district's board of trustees. You seek to withhold these records pursuant to section 552.111 of the Government Code.

Generally, the Attorney General will not raise an applicable exception when a governmental body has failed to claim it. *See* Open Records Decision No. 325 (1982) at 1. However, we will raise section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," because the release of confidential information could impair the rights of third parties and because the improper release of confidential information may constitute a misdemeanor. *See* Government Code § 552.352.

Section 552.101 encompasses information protected by other statutes. In the last legislative session, the enactment of Senate Bill 1 added section 21.355 to the Education Code. Section 21.355 provides that "[a]ny document evaluating the performance of a teacher or administrator is confidential." This office recently interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). We enclose a copy of Open Records Decision No. 643 (1996) for your information. In that opinion, this office also concluded that for purposes of section 21.355 an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code

and is administering at the time of his or her evaluation. *Id.* Based on the reasoning set out in Open Records Decision No. 643 (1996), we conclude that the documents at issue are confidential under section 21.355 of the Education Code. Therefore, pursuant to section 552.101 of the Government Code, the district must withhold these documents.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is fluid and cursive, with the first name "Sam" and last name "Haddad" clearly legible.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/RWP/ch

Ref.: ID# 24549

Enclosures: Open Records Decision No. 643
Submitted documents

cc: Ms. Carole Veir
P.O. Box 1826
Wimberley, Texas 78676
(w/o enclosures)

¹ Because we resolve your request under section 552.101 of the Government Code, we need not address the applicability of section 552.111.